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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie R. Salas, Esq.
Secretary
Federal Communications Commission
Washington, DC 20554

Re: Reply Comments
Amendment of Section 73.202(b)
Table of Allotments
FM Broadcast Stations
(Middlebury and Berlin, Vermont)
MM Docket No. 98-72, RM-9265
Dynamite Radio, Inc., WGTK (FM), Middlebury, VT

To: Chief, Allocations Branch (Mass Media Bureau)

Dear Ms. Salas:

Transmitted herewith are the REPLY COMMENTS of Dynamite Radio, Inc., the petitioner and licensee of FM broadcast station WGTK (FM), Middlebury, Vermont. A copy of this filing is also being served on counsel for Montpelier Broadcasting, Inc. who has commented in this proceeding.

Insofar as Dynamite is filing its reply without being represented by counsel, in accordance with Section 1.52 of the Commission's rules, an affidavit by Dynamite's president is attached hereto. If there are any other questions, please contact the undersigned.

Sincerely,



Anthony A. Neri, President
Dynamite Radio, Inc.
WGTK (FM)
74 Exchange Street
Middlebury, Vermont 05753

Phone: (802) 388-4101

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

JUL 28 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re

Amendment of Section 73.202(b))	
Table of Assignments)	MM Docket No. 98-72
FM Broadcast Stations)	RM-9265
(Middlebury, Berlin,)	
and Hardwick, Vermont))	

To: Chief, Allocations Branch

REPLY COMMENTS

Dynamite Radio, Inc. ("Dynamite"), licensee of FM station WGTK, Middlebury, Vermont, and proponent of the substitution of Channel 265C2 at Berlin, Vermont, in place of the present allotment of Channel 265A at Middlebury, hereby replies to the July 13, 1998, Comments and Counterproposal of Montpelier Broadcasting, Inc. ("MBI").

MBI opposes Dynamite's proposal on both procedural and substantive grounds. Dynamite shows herein that none of MBI's allegations are valid. MBI first argues that Dynamite's petition was defective and should not have been considered by the Commission. The fact is that the Commission did accept the petition, which is consistent with its actions in other cases. MBI fails to point to any case where the Commission dismissed a petition for rule making for failure to include a showing of reception services or for noncompliance with the verification requirement of Section 1.52 of the rules. There is nothing in the rules which requires a petition for rule making to supply a showing of reception services in a loss area. The Commission typically requests such information in comments on the notice of proposed rule making. Similarly, the Commission consistently allows a

petitioner to supply its verification in a subsequent pleading.¹ MBI's procedural complaints are completely meritless.

MBI next argues that the Commission should not remove a second commercial station from Middlebury to give Berlin a new station. Again, Dynamite's requested changes are fully consistent with Section 1.420 (i) of the Commission's rules, with its policies as enunciated in Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License 4 FCC Rcd 4870, (1989), and with prior Commission actions. For example, in 1992, the Commission moved Channel 244A from Newnan to Peachtree City, Georgia. Newnan had an AM station while Peachtree City had no station of its own. Similarly, Channel 288 was placed in Dunnigan, California, taking it away from Willows, California. Willows was left with only a daytime AM station. In contrast, Middlebury will continue to have a full time commercial service (WFAD) as well as an educational FM station, WRMC.

Most recently, in Pauls Valley, Oklahoma, et al., DA 98-1419, released July 17, 1998, the Commission moved Channel 264 from Mount Pleasant, Texas, to Overton, Texas, despite that 145,170 people would lose service from that station as a result. The Commission noted that Mt. Pleasant would continue to have

¹ With respect to the verification requirement, the following language appeared on the final page of Dynamite's petition: "In accordance with Section 1.52 of the Commission's rules, I hereby verify this document." See Attachment A hereto. It appears that the Commission overlooked that sentence when it stated in its NPRM that no verification was submitted in the petition for rule making.

service from its local AM station and the people who would lose service as a result of the FM station's move are well-served by other stations. Dynamite's proposal would result in a much smaller number of people losing service. Approval of Dynamite's request is fully consistent with the decision in Pauls Valley and other cases.

MBI provides no case in which the Commission rejected a proposal similar to Dynamite's. Its contention that Channel 265 should remain at Middlebury, even though that would deprive Berlin of an opportunity for a station of its own, are simply unconvincing. Moving Channel 265 to Berlin serves the purposes of Section 307(b) of the Communications Act, as amended, as it provides for a more equitable distribution of radio stations among the various communities. It further increases the efficiency of the spectrum by providing a new radio service to a significantly larger number of people. MBI does not even mention Section 307(b), let alone attempt to show that its position will further its goals.

Likewise, MBI's statement that Dynamite's proposal would leave a portion of Essex County, New York, with "only three or four broadcast reception services" is incorrect. MBI's engineering exhibit miscalculates WGTK's service contour. The areas it shows as being slightly underserved are outside WGTK's 60 dBu contour; they will not lose service from WGTK because they are not currently served by WGTK.

Attached hereto is an Engineering Statement of Carl E. Smith

Consulting Engineers which affirms the showing of loss area service which Dynamite supplied in its comments. The entire loss area has at least seven and as many as 16 full time aural services. MBI's inaccurate claim in this regard must be ignored.

MBI suggests a counterproposal to Dynamite's request to move WGTK to Berlin, the allotment of either Channel 262A or 264A to Hardwick, Vermont. (Nowhere in MBI's pleading does it specify what channel it desires for Hardwick; only in the engineering report are Channels 262A and 264A identified as being available for allotment at Hardwick.) It is noteworthy that MBI does not state unequivocally that it seeks an allotment at Hardwick and will apply for a station there. MBI promises to apply for the Hardwick station only if the Commission concludes that Channel 265 should be moved from Middlebury to Berlin. Should the Commission determine that WGTK should remain in Middlebury, then MBI has no interest in a Hardwick station.²

Moreover, MBI's counterproposal is defective.³ With respect to Channel 264, MBI acknowledges that it is short spaced to FM Station CBF, Channel 264C1, Montreal, Canada; this short

² This may seem a very strange approach. Yet, MBI's motive in filing its pleading is perfectly clear.

MBI is the licensee of FM station WNCS, Montpelier, Vermont. MBI's primary interest is not in a station at Hardwick, but rather is aimed solely at denying Dynamite's proposal, which might create competition for WNCS. The Commission should investigate whether MBI's pleading was made in good faith, or was filed improperly to delay action on Dynamite's request.

³ In addition to the technical difficulties described in the text, MBI's counterproposal is procedurally deficient, for it fails to state that it will promptly construct a station at Hardwick should it receive the construction permit.

spacing is more than 95 km. MBI asserts that a Hardwick station could protect CBF's signal in Canada by employing a directional antenna of some 20 db. However, Section 73.316(i) of the Commission's rules limits FM directional antennas to a maximum of 15 dB. The Commission's rules prohibit this allotment.

MBI omits consideration of interference from CBF's signal on a Hardwick station in the United States. A U.S. allotment must be free of interference from a Canadian station within the U.S. As shown by the Engineering Statement, the interfering contour of CBF, 40 dBu, completely encompasses Hardwick. Thus, any Hardwick station on Channel 264 would be subject to significant interference from CBF within the U.S., regardless of power level or directional antenna characteristics, in violation of the Commission's rules as well as the U.S./Canadian Treaty. MBI's counterproposal does not address this fatal flaw.

MBI's suggestion that Channel 262A may be allotted to Hardwick is also improper. The Engineering Statement notes that Channel 262A at Hardwick is short spaced to the allotment of Channel 262A at Magog, Quebec, by more than 64 km. The reference site proposed by MBI for Hardwick is inside the interfering contour of a full-powered Magog station. It would violate both Commission rules and the U.S./Canadian Treaty to allot Channel 262A to Hardwick.⁴


⁴ The pending proposal to reallocate Channel 262A from Magog to Sherbrooke is of no import. Rule making proposals which are contingent on another action are unacceptable. Cut and Shoot, Texas, 11 FCC Rcd 16383 (1996).

Accordingly, the Commission need not choose between Berlin and Hardwick, for MBI's counterproposal is defective and may not be accepted.⁵

Dynamite's proposal should be granted by the Commission. It is consistent with the policies regarding modification of a station's community of license. The Commission should dismiss MBI's counterproposal and amend Section 73.202(b) by replacing Channel 265A at Middlebury, Vermont, with Channel 265C2 at Berlin, Vermont.

Respectfully Submitted,
DYNAMITE RADIO, INC.

By


Anthony A. Neri
Its President

July 23, 1998

Dynamite Radio Inc.
Radio Station WGTK
74 Exchange Street
Middlebury, VT 05753

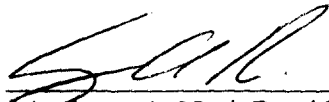
⁵ Should the Commission nevertheless determine that Channel 262A may be assigned to Hardwick, Dynamite is willing to accept, and will apply for and construct, an allotment of Channel 265C3 at Berlin, which is fully spaced at the reference coordinates of 44° 08' 42"; 72° 33' 48".

Affidavit

I, Anthony A. Neri, hereby depose and state that the following is true and correct to the best of my knowledge and belief, under penalty of perjury:

I am the President of Dynamite Radio, Inc. ("Dynamite"), licensee of FM broadcast station WGTK (FM), Middlebury, Vermont and the Petitioner in the instant matter. Dynamite now offers its REPLY COMMENTS in this proceeding. In accordance with Section 1.52 of the Commission's rules, I hereby affirm and verify that the statements and submissions made and presented by Dynamite herein, are truthful and accurate to the best of my knowledge and belief, under penalty of perjury.

Further Affiant Sayeth Naught on this 27 day of July, 1998



Anthony A. Neri, President
Dynamite Radio, Inc.
WGTK (FM)
74 Exchange Street
Middlebury, VT 05753

Telephone: (802) 388-4101

**ENGINEERING STATEMENT IN
SUPPORT OF REPLY COMMENTS**

MM DOCKET 98-72

CHANNEL 265C2 - BERLIN, VT

**Dynamite Radio, Inc.
Middlebury, VT**

July 21, 1998

**Prepared For: Mr. Anthony Neri
Dynamite Radio, Inc.
74 Exchange Street
Middlebury, VT 05753**

CARL E. SMITH CONSULTING ENGINEERS

CONTENTS

Title Page

Contents

Engineering Affidavit

Roy P. Stype, III

Engineering Statement

Table 1.0 - FM Allocation Study - Channel 264A
(100.7 mHz) - Hardwick, VT

Fig. 1.0 - Detailed Allocation
Study Channel 264A

Table 1.1 - FM Allocation Study - Channel 262A
(100.3 mHz) - Hardwick, VT

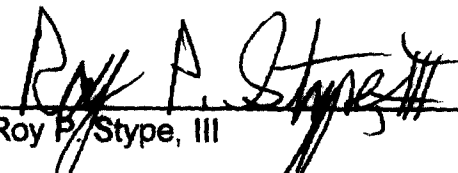
Fig. 1.1 - Detailed Allocation
Study Channel 264A

ENGINEERING AFFIDAVIT

State of Ohio)
) ss:
County of Summit)

Roy P. Stype, III, being duly sworn, deposes and states that he is a graduate Electrical Engineer, a qualified and experienced Communications Consulting Engineer whose works are a matter of record with the Federal Communications Commission and that he is a member of the Firm of "Carl E. Smith Consulting Engineers" located at 2324 North Cleveland-Massillon Road in the Township of Bath, County of Summit, State of Ohio, and that the Firm has been retained by Dynamite Radio, Inc., to prepare the attached "Engineering Statement In Support Of Reply Comments - MM Docket 98-72 - Channel 265C2 - Berlin, VT."

The deponent states that the Exhibit was prepared by him or under his direction and is true of his own knowledge, except as to statements made on information and belief and as to such statements, he believes them to be true.



Roy P. Stype, III

Subscribed and sworn to before me on **July 21, 1998.**



Notary Public

GAIL M. ELROD, Notary Public
Residence - Summit County
State Wide Jurisdiction, Ohio
My Commission Expires May 28, 2002

/SEAL/

ENGINEERING STATEMENT

This engineering statement is prepared on behalf of Dynamite Radio, Inc., licensee of Radio Station WGTK - Middlebury, Vermont, and proponent of MM Docket 98-72, which proposes to substitute Channel 265C2 in Berlin, Vermont, for Channel 265A in Middlebury, Vermont, and modify the license of WGTK to specify operation on Channel 265C2 in Berlin. It is prepared in support of reply comments in this rulemaking proceeding.

On the July 13, 1998, comment deadline in this proceeding, Montpelier Broadcasting, Inc., the licensee of Radio Station WNCS(FM) - Montpelier, Vermont, filed comments and a counterproposal in this proceeding. The WNCS counterproposal proposed the allotment of Channel 264A to Hardwick, Vermont, as its first local service in lieu of the proposed upgrade of WGTK and the associated change in its community of license. This counterproposal, however, is defective and cannot be considered in this proceeding.

Table 1.0 is an FM spacing study for Channel 264A in Hardwick, which was conducted from the reference coordinates specified in the WNCS counterproposal:

NL - 44° 30' 12"
WL - 72° 22' 07"

As shown in this table, the proposed use of Channel 264A in Hardwick would be short spaced to CBF-FM - Montreal, Quebec, which operates on Channel 264C1, by more than 95 kilometers. While the U.S./Canadian FM treaty does permit specially negotiated short spaced allotments under some circumstances, such a specially negotiated allotment is not permitted to cause any interference to the short spaced Canadian facility on Canadian soil. Nor is it permitted to receive any interference from

the short spaced Canadian facility on U. S. soil. Domestically, Class A stations are protected to their 60 dBu (1 mV/m) contours. Thus, in order to avoid received interference from CBF-FM in this situation, there can be no overlap between the CBF-FM 40 dBu contour and the 60 dBu contour for the proposed Hardwick allotment.

Figure 1.0 is a detailed allocation study depicting the predicted 40 dBu contour for CBF-FM in relation to the proposed reference coordinates for Channel 264A in Hardwick. Pursuant to the provisions of the U.S./Canadian FM treaty, since CBF-FM occupies an unlimited allotment, this contour was projected assuming uniform terrain and operation with maximum Class C1 facilities of 100 kilowatts effective radiated power at 300 meters above average terrain. As shown in this figure, the proposed reference site for Channel 264A in Hardwick is located inside the CBF-FM 40 dBu contour by a significant distance. Thus, any use of Channel 264A in Hardwick, regardless of power level or directional antenna characteristics would result in prohibited contour overlap with CBF-FM, in violation of this treaty and the FCC Rules. Thus, the counterproposal to allot Channel 264A to Hardwick, Vermont, is defective and cannot be considered in this proceeding.

Although it was not specifically proposed in the WNCS counterproposal, the engineering statement supporting the WNCS comments also suggests that it might also be possible to allot Channel 262A to Hardwick. As outlined below, however, the alternative possibility of allotting Channel 262A to Hardwick is also defective and, thus, cannot be considered in this proceeding. Table 1.1 is an FM spacing study for Channel 262A in Hardwick, which was conducted from the reference coordinates specified in the WNCS counterproposal:

NL - 44° 30' 12"
WL - 72° 22' 07"

As shown in this table, the proposed use of Channel 262A in Hardwick would be short spaced to a vacant allotment on Channel 262A in Magog, Quebec, by more than 64 kilometers, as well as to a pending proposal to reallocate this channel from Magog to Sherbrooke.

Figure 1.1 is a detailed allocation study depicting the predicted 40 dBu contour for Channel 262A in Magog in relation to the proposed reference coordinates for Channel 262A in Hardwick. Pursuant to the provisions of the U.S./Canadian FM treaty, since Channel 262A in Magog is an unlimited allotment, this contour was projected assuming uniform terrain and operation with maximum Class A facilities of 6 kilowatts effective radiated power at 100 meters above average terrain. As shown in this figure, the proposed reference site for Channel 262A in Hardwick is located just inside the 40 dBu contour for this allotment. Thus, any use of Channel 262A in Hardwick, regardless of power level or directional antenna characteristics would result in prohibited contour overlap with this allotment, in violation of this treaty and the FCC Rules. Thus, the alternate possibility of allotting Channel 262A to Hardwick, Vermont, is defective and cannot be considered in this proceeding. Furthermore, it is not possible to consider the alternate possibility of allotting Channel 262A to Hardwick contingent on the reallocation of Channel 262A from Magog to Sherbrooke, as well established FCC policy requires that counterproposals be complete and technically feasible at the time they are filed and not contingent on any external event which may, or may not, occur.

The WNCS comments also claim that the proposed substitution of Channel 265C2 in Berlin for Channel 265A in Middlebury will leave portions of Essex County, New York with only three or four full time aural services. This is simply not true. As documented in detail in WGTK's comments in this proceeding, the entire loss area which would

result from the changes to the FM Table of Allotments proposed in this proceeding will continue to receive at least seven full time aural services, with some portions of this loss area continuing to receive as many as sixteen full time aural services. An examination of the map exhibit contained in the WNCS engineering statement purporting to depict the areas which would be left underserved clearly shows that these areas lie outside the present WGTK 1 mV/m contour, as depicted in Figure 1.0 of the engineering statement supporting the WGTK comments in this proceeding.

Based on the above information, the WNCS counterproposal is patently defective. Therefore, pursuant to applicable FCC policies, it should be summarily dismissed and should not be considered in this proceeding. Furthermore, the claim in the WNCS comments that the proposed substitution of Channel 265C2 in Berlin, Vermont for Channel 265A in Middlebury, Vermont will leave underserved areas in Essex County, New York is totally false, as the areas which WNCS claims will be underserved are presently not within the WGTK 1 mV/m contour when projected assuming uniform terrain pursuant to the applicable FCC policies for allotment proceedings.

TABLE 1.0

FM ALLOCATION STUDY - CHANNEL 264A (100.7 MHz) - HARDWICK, VT

DYNAMITE RADIO, INC.
MIDDLEBURY, VT

STUDY COORDINATES: 44/30/12 72/22/07

STATION	LOCATION	CHANNEL	CLASS	SPACING (km)	REQUIRED SPACING*	NOTES
WCMD	Barre, VT	210	A	42.85	10.0	
WRUV	Burlington, VT	211	A	66.18	10.0	
WRUV	Burlington, VT	211	A	66.33	10.0	2
WPNHFM	Plymouth, NH	261	A	100.53	31.0	
ALLOTMENT	Magog, QU	262	A	86.55	51.0	3, 12
RULEMAKING	Sherbrooke, QU	262	A	103.85	51.0	9
WXXK	Lebanon, NH	263	C3	94.45	89.0	1
NEW	St-George-Beauce, QU	263	C1	226.93	168.0	12
WTBH	Mexico, ME	264	A	138.21	115.0	
CBFFM	Montreal, QU	264	C1	147.32	243.0	11
WVAY	Wilmington, VT	264	A	177.28	115.0	
WZLX	Boston, MA	264	B	261.19	178.0	
WGTK	Berlin, VT	265	C2	30.03	106.0	9, 11
WGTK	Middlebury, VT	265	A	82.63	72.0	3
WYNZ	Westbrook, ME	265	B1	191.69	96.0	1
CBF10F	Sherbrooke, QU	266	B	107.92	78.0	
WYKRFM	Haverhill, NH	267	A	53.18	31.0	
WCPV	Essex, NY	267	A	85.52	31.0	

* Required Spacing Per Section 73.207 of The FCC Rules

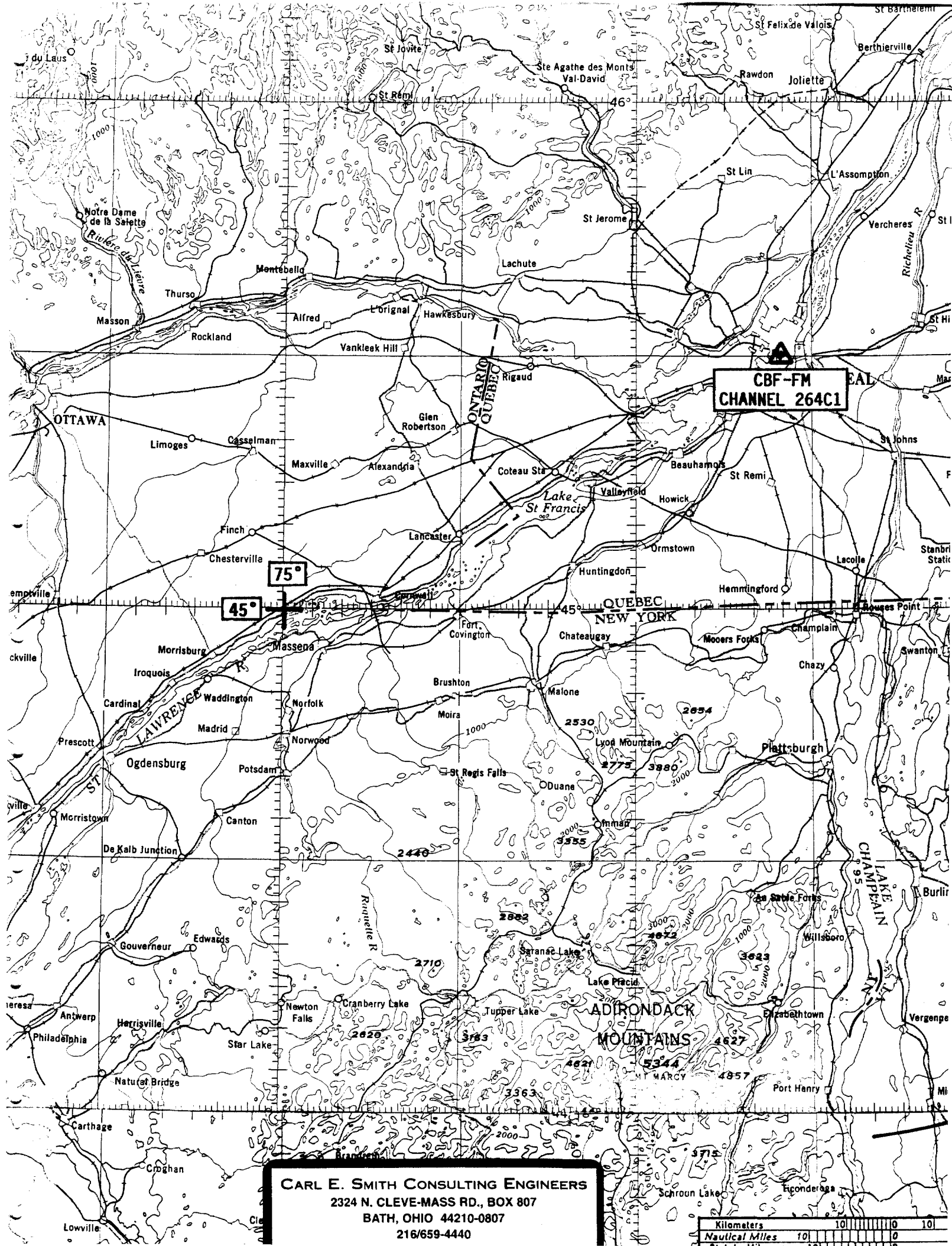
TABLE 1.0 (cont'd)

FM ALLOCATION STUDY - CHANNEL 264A (100.7 MHz) - HARDWICK, VT

DYNAMITE RADIO, INC.
MIDDLEBURY, VT

Notes:

- | | |
|--------------------------------------|----------------------------------|
| 1 - Applied For Under Section 73.215 | 7 - Pending Application |
| 2 - Construction Permit | 8 - Petition For Reconsideration |
| 3 - Channel Deletion Proposed | 9 - Proposed Rulemaking |
| 4 - Move From This Channel Ordered | 10 - Rulemaking Petition |
| 5 - Move to This Channel Ordered | 11 - Short-Spaced |
| 6 - One Step Reference Site | 12 - Vacant Allotment |



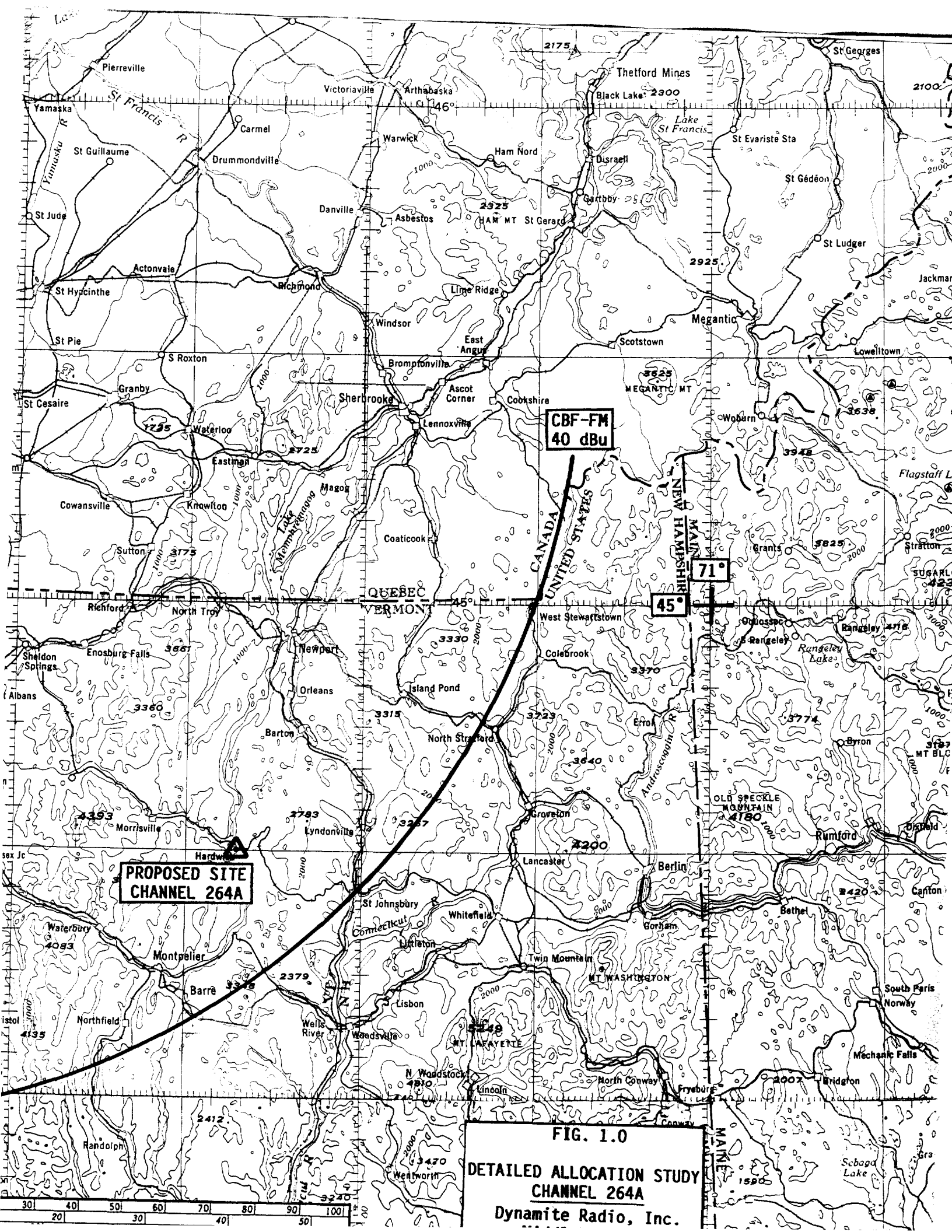


FIG. 1.0

DETAILED ALLOCATION STUDY
CHANNEL 264A

Dynamite Radio, Inc.

TABLE 1.1

FM ALLOCATION STUDY - CHANNEL 262A (100.3 MHz) - HARDWICK, VT

DYNAMITE RADIO, INC.
MIDDLEBURY, VT

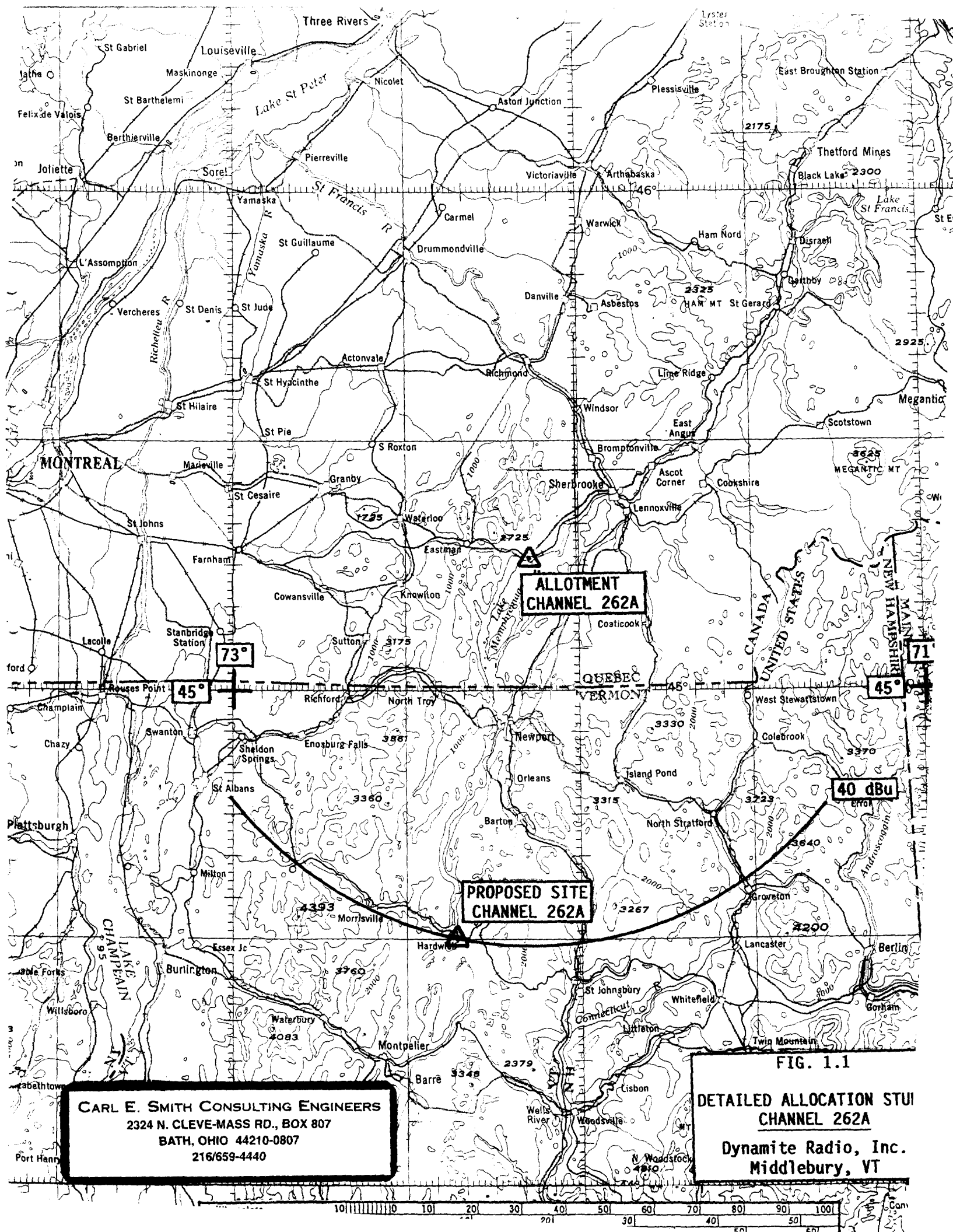
STUDY COORDINATES: 44/30/12 72/22/07

STATION	LOCATION	CHANNEL	CLASS	SPACING (km)	REQUIRED SPACING*	NOTES
WVPR	Windsor, VT	208	B	118.55	15.0	
RULEMAKING	Sherbrooke, QU	209	B	100.02	15.0	9
CBF-2	Sherbrooke, QU	209	B	107.92	15.0	3
WNTKFM	New London, NH	259	A	120.31	31.0	
WBTZ	Plattsburgh, NY	260	C	103.07	95.0	
WPNHFM	Plymouth, NH	261	A	100.53	72.0	
ALLOTMENT	Trois-Rivieres, QU	261	C1	205.69	168.0	12
ALLOTMENT	Magog, QU	262	A	86.55	151.0	3, 11, 12
RULEMAKING	Sherbrooke, QU	262	A	103.85	151.0	9, 11
WKBE	Warrensburg, NY	262	B1	164.24	143.0	
WHEB	Portsmouth, NH	262	B	206.34	178.0	
CJMJ	Ottawa, ON	262	C1	296.10	243.0	
WXXX	Lebanon, NH	263	C3	94.45	89.0	1
NEW	St-George-Beauce, QU	263	C1	226.93	168.0	12
CBFFM	Montreal, QU	264	C1	147.32	99.0	
WGTK	Berlin, VT	265	C2	30.03	55.0	9, 11
WGTK	Middlebury, VT	265	A	82.63	31.0	3

* Required Spacing Per Section 73.207 of The FCC Rules

Notes:

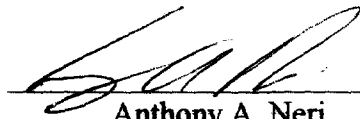
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| 4 - Move From This Channel Ordered | 10 - Rulemaking Petition |
| 5 - Move to This Channel Ordered | 11 - Short-Spaced |
| 6 - One Step Reference Site | 12 - Vacant Allotment |



Certificate of Service

I hereby certify that a copy of the foregoing "Reply Comments" has been served
by U.S. First Class mail, postage prepaid, on this 28 day of July, 1998, upon the following
party:

Montpelier Broadcasting, Inc.
c/o Mr. Barry A. Friedman, Esq.
Thompson Hine & Flory, LLP
Suite 800
1920 N Street, NW
Washington, DC 20554


Anthony A. Neri